

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 261

Introduced by Assembly Member Travis Allen

February 9, 2015

An act to amend Section ~~22972~~ of the ~~Business and Professions Code~~, *11364.5 of the Health and Safety Code*, relating to cigarettes and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 261, as amended, Travis Allen. Cigarettes and tobacco products: ~~retailers; licenses; retailers.~~

The California Cigarette and Tobacco Products Licensing Act of 2003 requires a retailer to have and maintain a license from the State Board of Equalization to engage in the sale of cigarette and tobacco products in California.

~~This bill would make a nonsubstantive change to that provision.~~

Existing law prohibits a person from maintaining or operating any place of business in which drug paraphernalia is kept, displayed, or offered in any manner, sold, furnished, transferred, or given away, unless that drug paraphernalia is completely and wholly kept, displayed, or offered within a separate room or enclosure to which persons under 18 years of age not accompanied by a parent or legal guardian are excluded. Under existing law, a violation of that provision is not a criminal offense, but is grounds for revocation or nonrenewal of any license, permit, or other entitlement previously issued by a city, county, or city and county for the privilege of engaging in that business and is grounds for denial of any future license, permit, or other entitlement

authorizing the conduct of that business or any other business, if the business includes the sale of drug paraphernalia.

This bill would instead prohibit a person from maintaining or operating a place of business described above unless the person has in place and maintains a license to engage in the sale of cigarette or tobacco products, and the place of business derives at least 50% of its annual gross revenues from the retail sale of cigarettes or tobacco products, as those terms are defined.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 11364.5 of the Health and Safety Code*
2 *is amended to read:*

3 11364.5. (a) Except as authorized by law, ~~no~~ a person shall
4 not maintain or operate any place of business in which drug
5 paraphernalia is kept, displayed or offered in any manner, sold,
6 furnished, transferred or given away unless ~~such~~ all of the following
7 conditions are satisfied:

8 (1) The drug paraphernalia is completely and wholly kept,
9 displayed or offered within a separate room or enclosure to which
10 persons under the age of 18 years not accompanied by a parent or
11 legal guardian are excluded. Each entrance to such a room or
12 enclosure shall be signposted in reasonably visible and legible
13 words to the effect that drug paraphernalia is kept, displayed or
14 offered in such room or enclosure and that minors, unless
15 accompanied by a parent or legal guardian, are excluded.

16 (2) The person has in place and maintains a license to engage
17 in the sale of cigarettes or tobacco products issued pursuant to
18 Division 8.6 (commencing with Section 22970) of the Business
19 and Professions Code.

20 (3) The place of business derives at least 50 percent of its annual
21 gross revenues from the retail sale of cigarettes, as defined in
22 Section 30003 of the Revenue and Taxation Code, or tobacco
23 products, as defined in Sections 30121 and 30131.1 of the Revenue
24 and Taxation Code.

25 (b) Except as authorized by law, ~~no~~ an owner, manager,
26 proprietor or other person in charge of any room or enclosure,
27 within any place of business, in which drug paraphernalia is kept,

1 displayed or offered in any manner, sold, furnished, transferred or
2 given away shall *not* permit or allow any person under ~~the age of~~
3 18 years *of age* to enter, be in, remain in or visit such room or
4 enclosure unless such minor person is accompanied by one of his
5 or her parents or by his or her legal guardian.

6 (c) Unless authorized by law, ~~no a person under the age of~~ 18
7 years *of age* shall *not* enter, be in, remain in or visit any room or
8 enclosure in any place of business in which drug paraphernalia is
9 kept, displayed or offered in any manner, sold, furnished,
10 transferred or given away unless accompanied by one of his or her
11 parents or by his or her legal guardian.

12 (d) As used in this section, “drug paraphernalia” means all
13 equipment, products, and materials of any kind ~~which that~~ are
14 intended for use or designed for use, in planting, propagating,
15 cultivating, growing, harvesting, manufacturing, compounding,
16 converting, producing, processing, preparing, testing, analyzing,
17 packaging, repackaging, storing, containing, concealing, injecting,
18 ingesting, inhaling, or otherwise introducing into the human body
19 a controlled substance. “Drug paraphernalia” includes, but is not
20 limited to, all of the following:

21 (1) Kits intended for use or designed for use in planting,
22 propagating, cultivating, growing or harvesting of any species of
23 plant ~~which that~~ is a controlled substance or from which a
24 controlled substance can be derived.

25 (2) Kits intended for use or designed for use in manufacturing,
26 compounding, converting, producing, processing, or preparing
27 controlled substances.

28 (3) Isomerization devices intended for use or designed for use
29 in increasing the potency of any species of plant ~~which that~~ is a
30 controlled substance.

31 (4) Testing equipment intended for use or designed for use in
32 identifying, or in analyzing the strength, effectiveness or purity of
33 controlled substances.

34 (5) Scales and balances intended for use or designed for use in
35 weighing or measuring controlled substances.

36 (6) Diluents and adulterants, such as quinine hydrochloride,
37 mannitol, mannite, dextrose, and lactose, intended for use or
38 designed for use in cutting controlled substances.

- 1 (7) Separation gins and sifters intended for use or designed for
2 use in removing twigs and seeds from, or in otherwise cleaning or
3 refining, marijuana.
- 4 (8) Blenders, bowls, containers, spoons, and mixing devices
5 intended for use or designed for use in compounding controlled
6 substances.
- 7 (9) Capsules, balloons, envelopes, and other containers intended
8 for use or designed for use in packaging small quantities of
9 controlled substances.
- 10 (10) Containers and other objects intended for use or designed
11 for use in storing or concealing controlled substances.
- 12 (11) Hypodermic syringes, needles, and other objects intended
13 for use or designed for use in parenterally injecting controlled
14 substances into the human body.
- 15 (12) Objects intended for use or designed for use in ingesting,
16 inhaling, or otherwise introducing marijuana, cocaine, hashish, or
17 hashish oil into the human body, such as the following:
 - 18 (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
19 pipes with or without screens, permanent screens, hashish heads,
20 or punctured metal bowls.
 - 21 (B) Water pipes.
 - 22 (C) Carburetion tubes and devices.
 - 23 (D) Smoking and carburetion masks.
 - 24 (E) Roach clips, meaning objects used to hold burning material,
25 such as a marijuana cigarette that has become too small or too
26 short to be held in the hand.
 - 27 (F) Miniature cocaine ~~spoons~~, *spoons* and cocaine vials.
 - 28 (G) Chamber pipes.
 - 29 (H) Carburetor pipes.
 - 30 (I) Electric pipes.
 - 31 (J) Air-driven pipes.
 - 32 (K) Chillums.
 - 33 (L) Bongs.
 - 34 (M) Ice pipes or chillers.
- 35 (e) In determining whether an object is drug paraphernalia, a
36 court or other authority may consider, in addition to all other
37 logically relevant factors, the following:
 - 38 (1) Statements by an owner or by anyone in control of the object
39 concerning its use.

1 (2) Prior convictions, if any, of an owner, or of anyone in
2 control of the object, under any state or federal law relating to any
3 controlled substance.

4 (3) Direct or circumstantial evidence of the intent of an owner,
5 or of anyone in control of the object, to deliver it to persons whom
6 he or she knows, or should reasonably know, intend to use the
7 object to facilitate a violation of this section. The innocence of an
8 owner, or of anyone in control of the object, as to a direct violation
9 of this section shall not prevent a finding that the object is intended
10 for use, or designed for use, as drug paraphernalia.

11 (4) Instructions, oral or written, provided with the object
12 concerning its use.

13 (5) Descriptive ~~materials~~; *materials* accompanying the object
14 ~~which~~ *that* explain or depict its use.

15 (6) National and local advertising concerning its use.

16 (7) The manner in which the object is displayed for sale.

17 (8) Whether the owner, or anyone in control of the object, is a
18 legitimate supplier of like or related items to the community, such
19 as a licensed distributor or dealer of tobacco products.

20 (9) The existence and scope of legitimate uses for the object
21 in the community.

22 (10) Expert testimony concerning its use.

23 (f) This section ~~shall~~ *does* not apply to any of the following:

24 (1) Any pharmacist or other authorized person who sells or
25 furnishes drug paraphernalia described in paragraph (11) of
26 subdivision (d) upon the prescription of a physician, dentist,
27 podiatrist or veterinarian.

28 (2) Any physician, dentist, podiatrist or veterinarian who
29 furnishes or prescribes drug paraphernalia described in paragraph
30 (11) of subdivision (d) to his or her patients.

31 (3) Any manufacturer, wholesaler or retailer licensed by the
32 California State Board of Pharmacy to sell or transfer drug
33 paraphernalia described in paragraph (11) of subdivision (d).

34 (g) Notwithstanding any other ~~provision of~~ law, including
35 Section 11374, *a* violation of this section ~~shall~~ *is* not ~~constitute~~
36 a criminal offense, but operation of a business in violation of the
37 provisions of this section shall be grounds for revocation or
38 nonrenewal of any license, permit, or other entitlement previously
39 issued by a city, county, or city and county for the privilege of
40 engaging in ~~such~~ *that* business and shall be grounds for denial of

1 any future license, permit, or other entitlement authorizing the
2 conduct of ~~such~~ *that* business or any other business, if the business
3 includes the sale of drug paraphernalia.

4 SECTION 1. ~~Section 22972 of the Business and Professions~~
5 ~~Code is amended to read:~~

6 ~~22972. (a) Commencing June 30, 2004, a retailer shall have~~
7 ~~in place and maintain a license to engage in the sale of cigarettes~~
8 ~~or tobacco products. A retailer that owns or controls more than~~
9 ~~one retail location shall obtain a separate license for each retail~~
10 ~~location, but may submit a single application for those licenses.~~

11 ~~(b) The retailer shall conspicuously display the license at each~~
12 ~~retail location in a manner that is visible to the public.~~

13 ~~(c) A license is not assignable or transferable. A person who~~
14 ~~obtains a license as a retailer who ceases to do business as specified~~
15 ~~in the license, or who never commenced business, or whose license~~
16 ~~is suspended or revoked, shall immediately surrender the license~~
17 ~~to the board.~~

18 ~~(d) A license shall be valid for a 12-month period, and shall be~~
19 ~~renewed annually.~~